

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GREGORY MANASHER and
FRIDA SIROTA,

Plaintiffs,

v.

Case No. 06-10749
Hon. Sean F. Cox

NECC TELECOM,

Defendant.

ORDER

This matter is before the Court on Defendant's Motion for clarification of the Court's Order granting Plaintiffs' Motion for leave to file a First Amended Complaint entered December 8, 2006.

Defendant asks the Court to: (1) order Plaintiffs to file their First Amended Complaint immediately; (2) prohibit Plaintiffs from conducting additional class certification discovery; and (3) prohibit Plaintiffs from conducting merits discovery until the Court rules on Plaintiffs' Motion for class certification. Plaintiffs filed their First Amended Complaint on December 12, 2006.

In accordance with the Court's Order, Plaintiffs' motion for class certification must be filed within 20 days of the filing of their First Amended Complaint. See Fed.R.Civ.P. 12(a)(1)(A). Defendant claims there are no outstanding discovery requests. Further, Plaintiffs do not have enough time to get responses to any new discovery requests before their motion for

class certification is due. Thus, as stated in the Court's Order, while the Court declines to enter an order explicitly prohibiting discovery, Plaintiffs are effectively prohibited from obtaining additional discovery prior to filing their motion for class certification.

To avoid further delay in the proceedings, the Court also declines to enter an order prohibiting merits discovery pending a ruling on Plaintiffs' motion for class certification. In the alternative, Defendant asks the Court to prohibit Plaintiffs from relying on any "additional discovery" in support of its motion for class certification. Defendant is concerned that Plaintiffs will obtain new discovery and rely on it in their reply brief to their motion for class certification. Generally, a new issue may not be raised for the first time in a reply brief. *See Seay v. Tennessee Valley Authority*, 339 F.3d 454, 481 (6th Cir. 2003) and *Wright v. Holbrook*, 794 F.2d 1152, 1156 (6th Cir. 1986). Therefore, the Court declines to enter an order.

Defendant's Motion for clarification is **GRANTED**, but the Court declines to issue the orders sought by Defendant.

IT IS SO ORDERED.

S/Sean F. Cox
Sean F. Cox
United States District Judge

Dated: December 18, 2006

I hereby certify that a copy of the foregoing document was served upon counsel of record on December 18, 2006, by electronic and/or ordinary mail.

s/Timilyn M. Katsaros
Administrative Assistant